

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

JAMES ALLEN LONG

PETITIONER

v.

No. 5:06CV00238 JLH

LARRY NORRIS, Director,
Arkansas Department of Correction

RESPONDENT

ORDER

James Long has filed a motion for issuance of certificate of appealability pursuant to 28 U.S.C. § 2253. A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). The Eighth Circuit has followed the Ninth Circuit in referring to this as a “modest standard.” *Randolph v. Kemna*, 276 F.3d 401, 403 n.1 (8th Cir. 2002). To meet this “modest standard,” the petitioner must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues differently or that the questions are adequate to deserve encouragement to proceed further. *Id.*

Nearly all of Long’s claims were procedurally defaulted or otherwise waived. However, Long may have met this “modest standard” with respect to the following claims:

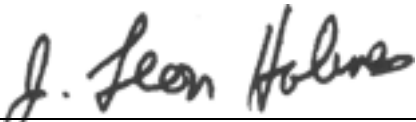
Claim 3: Trial counsel was ineffective for failing to object to the way that the trial court handled the State’s Batson challenge; and

Claim 7(a): Appellate counsel was ineffective for failing to argue on direct appeal that trial counsel was ineffective for failing to object to the way that the trial court handled the State’s Batson challenge.

Therefore, a certificate of appealability will be issued as to those two issues.

Long's motion for issuance of certificate of appealability is GRANTED IN PART and DENIED IN PART. His motion is granted as to the two specific issues identified hereinabove but denied with respect to the remaining issues.

IT IS SO ORDERED this 20th day of July, 2007.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE